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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-NINTH SESSION

Report of the Sixth Committee

Rapporteur: Mr. Ghassan OBEID (Syrian Arab Republic)

I. INTRODUCTION

1. At its 4th plenary meeting, on 19 September 1997, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fifty-second session the item entitled "Report of the International Law Commission on the work of its forty-ninth session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 16th to 25th and 32nd meetings, on 27, 30 and 31 October, from 3 to 7 and on 19 November 1997. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/52/SR.16-25 and 32).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the International Law Commission on the work of its forty-ninth session;[1]

(b) Letter dated 23 July from the Permanent Representative of Turkmenistan to the United Nations addressed to the Secretary-General (A/52/259 and Corr.1).

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[1] Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10).

4. The Chairman of the International Law Commission at its forty-ninth session introduced the report of the Commission: chapters I to III and part of chapter X at the 16th meeting, on 27 October; chapter IV at the 18th meeting, on 30 October; chapter V at the 20th meeting, on 3 November; and chapters VI to X at the 22nd meeting, on 5 November. At the 25th meeting, on 7 November, the Chairman of the Commission made a statement in the light of the debate (see A/C.6/52/SR.25).

5. Pursuant to the request of the General Assembly in paragraph 18 of its resolution 51/160, the Secretary-General organized a colloquium on the progressive development and codification of international law to commemorate the fiftieth anniversary of the establishment of the International Law Commission, which was held on 28 and 29 October 1997.

II. CONSIDERATION OF DRAFT RESOLUTION A/C.6/52/L.15 AND Corr.1

6. At the 32nd meeting, on 19 November, the representative of India introduced a draft resolution entitled "Report of the International Law Commission on the work of its forty-ninth session" (A/C.6/52/L.15 and Corr.1), which had been proposed by the Chairman.

7. At the same meeting, the Chairman of the Committee drew its attention to a statement of the programme budget implications of draft resolution A/C.6/52/L.15 and Corr.1, submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly (A/C.6/52/L.20).

8. Also at the same meeting, the Committee adopted operative paragraphs 10 and 11 of draft resolution A/C.6/52/L.15 and Corr.1 by a separate vote of 75 in favour to 1 against, with 9 abstentions. Statements in connection with the vote were made by the representatives of New Zealand, the United States of America, Malaysia, Turkey, Tunisia, Ukraine, Viet Nam, Canada, the United Kingdom of Great Britain and Northern Ireland, Portugal, Argentina and Zambia (see A/C.6/52/SR.32).

9. The representatives of Mexico and Cuba made statements in explanation of position before the adoption of the draft resolution as a whole (see A/C.6/52/SR.32).

10. At the same meeting, the Committee adopted draft resolution A/C.6/52/L.15 and Corr.1, as a whole, without a vote (see para. 11).

III. RECOMMENDATION OF THE SIXTH COMMITTEE

11. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the International Law Commission on the work of its forty-ninth session

The General Assembly,

Having considered the report of the International Law Commission on the work of its forty-ninth session,[2]

Emphasizing the importance of furthering the progressive development of international law and its codification as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[3]

Emphasizing also the role of the International Law Commission in the fulfilment of the objectives of the United Nations Decade of International Law,

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission further to enhance their contribution to the progressive development of international law and its codification,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Stressing the usefulness of structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report,

Wishing to enhance further the interaction between the Sixth Committee as a body of government representatives and the International Law Commission as a body of independent legal experts, with a view to improving the dialogue between the two organs,

1. Takes note of the report of the International Law Commission on the work of its forty-ninth session,[2] and expresses its appreciation to the Commission for the work accomplished at that session, in particular for the completion of the first reading of draft articles on nationality of natural persons in relation to the succession of States and for the preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties;

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[2] Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10).

[3] Resolution 2625 (XXV), annex.

2. Draws the attention of Governments to the importance, for the International Law Commission, of having their views on all the specific issues identified in chapter III of its report and in particular on:

(a) The draft articles on nationality of natural persons in relation to the succession of States adopted on first reading by the Commission, and urges them to submit their comments and observations in writing by 1 October 1998;

(b) The preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties, including human rights treaties;

3. Recommends that, taking into account the comments and observations of Governments, whether in writing or expressed orally in debates in the General Assembly, the International Law Commission should continue its work on the topics in its current programme;

4. Takes note of the invitation by the International Law Commission to all treaty bodies set up by normative multilateral treaties that may wish to do so to provide, in writing, their comments and observations on the preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties, including human rights treaties, and takes note of the views expressed by Member States on the matter;

5. Invites Governments to submit comments and observations on the practical problems raised by the succession of States affecting the nationality of legal persons in order to assist the International Law Commission in deciding on its future work on this portion of the topic of "Nationality in relation to the succession of States";

6. Recalls the importance for the International Law Commission of having the views of Governments on the draft articles on State responsibility adopted on first reading by the Commission at its forty-eighth session in 1996;[4]

7. Takes note of the decision by the International Law Commission to proceed with its work on "International liability for injurious consequences arising out of acts not prohibited by international law", undertaking, as a first step, the issue of prevention, and to reiterate its request to Governments to provide in writing, if they have not previously done so, their comments and observations on the topic of international liability, including the draft articles prepared by the Working Group of the International Law Commission at its forty-eighth session in 1996,[5] in order to assist the Commission in its work on that topic;

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[4] Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 and corrigendum (A/51/10 and Corr.1), chap. III, sect. D.

[5] Ibid., annex I.

8. Endorses the decision of the International Law Commission to include in its agenda the topics "Diplomatic protection" and "Unilateral acts of States";[6]

9. Welcomes with appreciation the steps taken by the International Law Commission in relation to its internal matters, and encourages it to continue enhancing its efficiency and productivity taking into consideration the discussion held by the General Assembly at its fifty-second session;

10. Takes note of the comments of the International Law Commission on the question of a split session for 1998, as presented in paragraphs 225 to 227 of its report;[2]

11. Takes note also of the position of the International Law Commission contained in paragraph 228 of its report[2] on the duration of its future sessions;

12. Requests the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, those specific issues, if any, on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

13. Takes note with appreciation of the Commission's ongoing review of its cooperation and relationship with other bodies concerned with international law, and requests the Commission, in consultation with the Secretary-General, to consider further the implementation of article 16, paragraph (e), and article 26, paragraph 2, of its statute;

14. Notes that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the Commission and in formulating their comments and observations;

15. Reaffirms its previous decisions concerning the role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

16. Once again expresses the wish that seminars will continue to be held in conjunction with the sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars, appeals to States that can do so to make the voluntary contributions that are urgently needed for the holding of the seminars, and requests the Secretary-General to provide the seminars with adequate services, including interpretation, as required;

17. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the

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[6] Ibid., Fifty-second Session, Supplement No. 10 (A/52/10), para. 221.

Commission at the fifty-second session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

18. Expresses its appreciation to the Secretary-General for the organization of a colloquium on the progressive development and codification of international law which was held on 28 and 29 October 1997 in commemoration of the fiftieth anniversary of the establishment of the International Law Commission;

19. Welcomes the decision of the International Law Commission to hold a two-day seminar at Geneva on 22 and 23 April 1998 to celebrate the fiftieth anniversary of the Commission;

20. Recommends that the debate on the report of the International Law Commission at the fifty-third session of the General Assembly commence on 26 October 1998.